

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
2020 FEB 18 AM 11:40
OFFICE OF THE CLERK

LUIS A. VELEZ,
Petitioner,

v.

Case No. 4:14-CR-3095

UNITED STATES OF AMERICA,
Respondant.

PRO SE MOTION FOR MODIFICATION OF SENTENCE
PURSUANT TO 18 U.S.C. § 3582(c)(2)
(Retroactive Guideline Amendment 782)

COMES NOW, Petitioner, Luis A. Velez, pro se, and files this Motion for Modification of Sentence in the United States District Court for the District of Nebraska, pursuant to 18 U.S.C. § 3582(c)(2). Petitioner is a layman of the law, unskilled in the law, and therefore, requests that this Motion for Modification of Sentence be construed liberally. Haines v. Kerner, 404 U.S. 519 (1972).

Petitioner hereby respectfully requests a modification or reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(2) and the Guideline Amendment 782 to the United States Sentencing Guidelines, which made a reduction in the base offense level for most drug offenses retroactive as of November 1, 2014. Petitioner respectfully moves this Honorable Court for an Order modifying and thus reducing his sentence of 156 months imprisonment, pursuant to this Court's jurisdiction authority as set forth and as contained in Title 18 U.S.C. § 3582(c)(2). Petitioner requests this modification or reduction of sentence based upon Amendment 782, an intervening post-sentencing change in the U.S. Sentencing Guidelines, which effectively lowers Petitioner's term of imprisonment.

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In support of modifying or reducing his current sentence, Petitioner states the following:

Statement of the Case

Petitioner was sentenced by this Honorable Court on February 13, 2015 for one count of possession with intent to distribute methamphetamine, in violation of Title 21 U.S.C. § 841(a)(1). Petitioner's total offense level was at 31, his Criminal History Category was at VI, and his Guideline Custody Range was 188 to 235 months. Based on his lower amount of role in the underlying drug enterprise, the coercive atmosphere he was living under, the threats of violence against him, his diminished mental capacity, his health infirmities, and his age, this Court gave Petitioner a downward variance and sentenced him to 156 months in prison, followed by a 5 year term of Supervised Release. (See Sentencing Transcripts).

Any detailed or extended statement of the facts in this case would be improper and unavailing. Petitioner's instant motion for sentence reduction is, as a matter of law, a continuation of the criminal case and is not a civil post-conviction relief pleading. Therefore, Petitioner herein does not seek to introduce new evidence or to argue or litigate the facts of this case. To the contrary, Petitioner's instant Motion, pursuant to Title 18 U.S.C. § 3582(c)(2), seeks a reduction of his term of imprisonment as a result of an intervening, post-sentencing change of the United States Sentencing Guidelines. However, the current advisory Guidelines apply.

It is also important to bring to this Honorable Court's attention that Petitioner has accepted responsibility for his actions and has not, in any way, filed an appeal or a post-conviction relief pleading to challenge his conviction. This is the first motion he has filed since he was sentenced in 2015. Petitioner is currently a 57 year old inmate who is serving his 156 month sentence at the Federal Correctional Complex-Coleman Medium in Coleman, Florida. His projected release date is December 22, 2024.

Amendment 782 to the Guidelines

The United States Sentencing Commission sent to Congress proposed changes to the Guidelines, which included Amendment 782. This amendment's goal was to improve the unjustifiable disparities between drug convictions.

Congress adopted Amendment 782 to the Guidelines. Clearly the Sentencing Commission and Congress recognized the policy priority to correct the disparities surrounding drug sentences. Amendment 782 specifically lowered the U.S.S.G. § 2D1.1 drug quantity guideline range. See Hughes v. United States, 138 S.Ct. 1765, 201 L.Ed.2d 72 (2018).

Petitioner respectfully submits that this Honorable Court so too will accord the same or similar priority status in ruling on this instant Motion for a reduction in sentence. Amendment 782 to the Guidelines directly reduces Petitioner's Offense Level by two (2) levels.

Title 18 U.S.C. § 3582(c)(2)

Title 18 U.S.C. § 3582(c)(2) permits this Honorable Court to reduce Petitioner's sentence. Amendment 782 has retroactively amended Petitioner's sentencing range and offense level. Title 18 U.S.C. § 994(o) and § 994(u), Amendment 782, is not mandatory and must be applied in an advisory manner. Petitioner would also state that U.S.S.G. § 1B1.10(c) allows him retroactivity, based on the U.S. Sentencing Commission's and Congress's passage of Amendment 782.

If this Honorable Court adopts Amendment 782, Petitioner's Offense Level would be reduced by two (2) levels. Instead of being at Offense Level 31, Petitioner's offense level would drop down to Offense Level 29, with a Guideline Range of 151 to 188 months. Because Petitioner received a downward variance on his original sentence, an equivalent sentence would now be about 125 months of imprisonment. (see 2015 Historical Sentencing Guidelines, Exhibit "A"). If this Honorable Court accepts Petitioner's calculation,

the modification would only reduce Petitioner's sentence by 31 months. This reduction would still accomplish all the statutory goals of sentencing, which include promoting respect for the law and providing just punishment for this particular crime. It was the direct will of the Sentencing Commission and Congress to improve the unjustifiable disparities between drug convictions by lowering the offense level for offenders, such as Petitioner.

§ 3553(a) Factors

Under Title 18 U.S.C. § 3553(a), there are several factors that Petitioner would like to bring to this Honorable Court's attention. When Petitioner was sentenced, the Court stated that Petitioner's "involvement in this crime...certainly does not rise to the level of many other drug dealers that I see in this court, and [Petitioner's] involvement...is not qualitatively the same as I often see in drug cases of this nature." (Sentencing Transcripts). This Honorable Court also took into account Petitioner's "overall physical and mental capacity and health" when he was sentenced. (Id.). Petitioner suffers from a significantly reduced mental capacity that is "fairly well-documented by the Social Security Administration" and Petitioner's "treating mental health professionals." (Id.). It is also important to note that, even though Petitioner may have a substantial criminal record, the prior crimes were mostly petty crimes that he "rarely served more than four to six months for." (Id.). Petitioner's reduced mental capacity also contributed substantially to the commission of this crime, as well as his prior crimes. (See Id.).

In addition, Petitioner states that he has been persistently striving to better himself positively and progressively while he has been incarcerated, even though his sentence was "likely going to end up being a life sentence." (Id.). According to Title 18 U.S.C. § 3553(a)(2)(D) and United States v. Pepper, Supreme Court Case 88 Cr1 681 (2011), this Honorable Court has the discretion to reduce Petitioner's sentence

for rehabilitation progress. Petitioner has been employed his entire sentence and he has been making vocational progress while he has been incarcerated. He has also participated in many programs, including several for drug treatment, personal growth, and life planning. Petitioner is determined to be a more productive individual upon his re-entry back into society. (See Rehabilitation Progress Report, Exhibit "B"). Besides making substantial progress in his rehabilitation efforts, Petitioner's custody classification level has been lowered and he does not present any problems to Federal Bureau of Prisons staff members or fellow inmates.

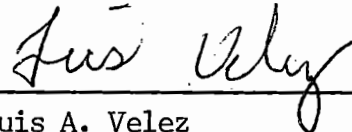
Conclusion

WHEREFORE, Petitioner hopes and prays that this Honorable Court will reduce his Offense Level by two (2) levels, because of Amendment 782, his rehabilitation progress, and the above stated reasons. Petitioner lastly requests this Honorable Court to appoint the Federal Public Defender's Office to assist him in this § 3582(c)(2) proceeding if this Court deems assistance is warranted.

2-11-20

Date

Respectfully Submitted,



Luis A. Velez
Reg. #26708-047, Unit C-3
Federal Correctional Complex-
Coleman Medium
P.O. Box 1032
Coleman, Florida 33521-1032

CERTIFICATE OF SERVICE

I, Luis A. Velez, HEREBY CERTIFY that a true and correct copy of the foregoing, Pro Se Motion for Modification of Sentence, has been furnished, via the United States Postal Service, this 2 day of 15, 2020, to:

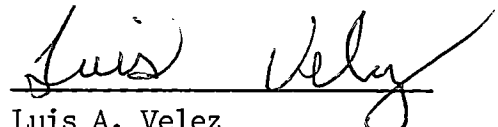
Clerk of the Court
U.S. District Courthouse
111 South 18th Plaza
Omaha, Nebraska 68102

"and"

U.S. Attorney
U.S. Attorney's Office
100 Centennial Mall North
Suite 487, Federal Building
Lincoln, Nebraska 68508-3865

2-11-20
Date

Respectfully Submitted,


Luis A. Velez
Reg. #26708-047, Unit C-3
Federal Correctional Complex-
Coleman Medium
P.O. Box 1032
Coleman, Florida 33521-1032

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life

-2

MALE CUSTODY CLASSIFICATION FORM * 12-11-2019
 PAGE 001 OF 001 12:55:14

(A) IDENTIFYING DATA

REG NO.: 26708-047 FORM DATE: 07-24-2019 ORG: COM

NAME....: VELEZ, LUIS A

MGTV: NONE

PUB SFTY: NONE

MVED:

(B) BASE SCORING

DETAINER: (0) NONE SEVERITY.....: (3) MODERATE
 MOS REL.: 70 CRIM HIST SCORE: (10) 19 POINTS
 ESCAPES.: (0) NONE VIOLENCE.....: (4) 10-15 YRS SERIOUS
 VOL SURR: (0) N/A AGE CATEGORY...: (0) 55 AND OVER
 EDUC LEV: (1) ENRLD + SAT IN GED DRUG/ALC ABUSE.: (1) <5 YEARS

(C) CUSTODY SCORING

TIME SERVED.....: (4) 26-75% PROG PARTICIPAT: (1) AVERAGE
 LIVING SKILLS...: (1) AVERAGE TYPE DISCIP RPT: (0) GREATEST
 FREQ DISCIP RPT.: (1) 2-5 FAMILY/COMMUN...: (4) GOOD

--- LEVEL AND CUSTODY SUMMARY ---

BASE CUST	VARIANCE	SEC TOTAL	SCORED LEV	MGMT SEC	LEVEL	CUSTODY	CONSIDER
+19	+11	+3	+22	MEDIUM	N/A	IN	INCREASE

G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

~~00000~~ *
PAGE 001 OF 001 *

INMATE EDUCATION DATA
TRANSCRIPT

* 02-06-2020
* 14:41:49

REGISTER NO: 26708-047
FORMAT.....: TRANSCRIPT

NAME...: VELEZ
RSP OF: COM-COLEMAN MED FCI

FUNC: PRT

----- EDUCATION INFORMATION -----

FACL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
COM	ESL HAS	ENGLISH PROFICIENT	07-27-2015 1021	CURRENT
COM	GED EN	ENROLL GED NON-PROMOTABLE	07-27-2015 1021	CURRENT

----- EDUCATION COURSES -----

SUB-FACL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS
COP	VT ROOM 2 GED 12:30-3:00PM M-F	02-24-2016	06-14-2017	P	W	I	130
COP	PERSONAL GROWTH	11-23-2015	12-25-2015	P	C	P	10
COP	CHANGE PLAN	06-09-2015	08-11-2015	P	C	P	10

----- HIGH TEST SCORES -----

TEST	SUBTEST	SCORE	TEST DATE	TEST FACL	FORM	STATE
TABE M	MATH APPL	6.0	01-10-2016	COP	M9	
	MATH COMP	6.5	01-10-2016	COP	M9	
	READING	8.0	01-10-2016	COP	M9	

G0000

TRANSACTION SUCCESSFULLY COMPLETED

Achievement Award

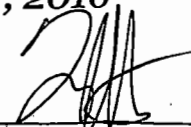
Presented to

Luis Velez
for

For Successful Completion of
Personal Growth

Presented on the 27th day of January, 2016


J. Sheffield, Counselor


T. Padgett, Unit Manager

~Certificate of Achievement~

This certifies that

LUIS VELTZ

has satisfactorily completed

CHANGE PLAN

Consisting of 10 Hours of Training

This certificate is hereby issued this 11th day of AUGUST, 2015



Counselor Alicea



Unit Manager Padgett

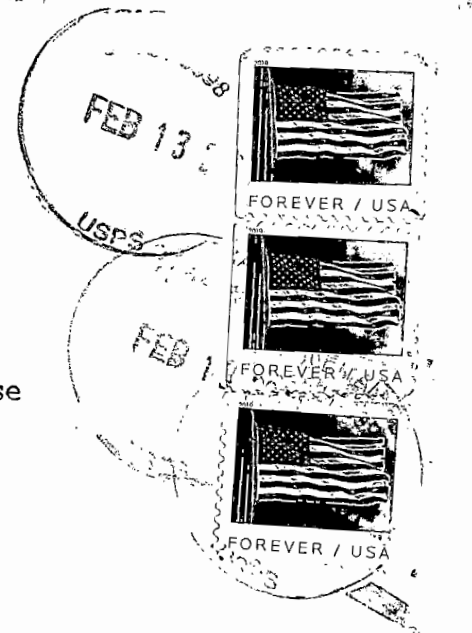
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U.S. DISTRICT COURT

Clerk of the Court
U.S. District Courthouse
111 South 18th Plaza
Omaha, Nebraska 68102



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